REMARKS

In the Office Action dated February 3, 2004, claims 1-13 are pending, claims 1-13 are rejected and claim 14 is withdrawn from consideration. The rejection is made final.

Claims 1 and 14 have been amended to correct typographical errors.

Claim 14, which was newly presented in the prior response, has been withdrawn from consideration. Applicants request reconsideration of this position. In the embodiment illustrated in Fig. 1, fixing element 12 has an integral bearing surface that is spherically shaped. In the embodiment illustrated in Fig. 6, and specifically recited in claim 14, the fixing element and bearing surface are provided as two components, 78 and 76. It is respectfully considered that claim 14 is directed to the same inventive concept and should be joined with claims 1-13.

The rejection of claims 1-11 under 35 U.S.C §102(b) and claims 12-13 under 35 U.S.C §103(a) over Stoffer et al. (US 4,971,497) is continued. Applicants strongly disagree. To aid in the comparison of the present invention to Stoffer, colored drawings of Figs. 5 and 8 of Stoffer are submitted along with a colored drawing of Fig. 1 of the present application. Components alleged by the examiner to correspond with the present invention. The corresponding elements are attempted to be colored the same in Stoffer figures 5 and 8 as for the present invention.

First, the examiner states that Stoffer discloses "[a] fixing element 65 to be fastened to a substructure [not shown], where the fixing element has at least one bore" [in which bushing 67 is inserted].

Applicants agree and the fixing element is colored blue.

Next, the examiner states that Stoffer discloses "[a]t least one screw element 64 which can be passed through the at least one bore of said fixing element, and which can be screwed into said substructure, said screw having a shaft and a head, as seen in figures 5-8."

However, element 64 is disclosed as the fastener [which can be seen to be positioned in the bushing 67]. It is not seen where fastener 64 has a shaft and a head, as required in the present claims. In Stoffer, the screw having a shaft and a head is "threaded attachment member 103" (shown in phantom in Fig. 8; see col. 5, lines 27-30). When the threaded attachment member 103 is installed in fastener 64, ball nut 83 may be rotated [within fastener 64].

Next, the examiner states that Stoffer discloses "[a]t least one bushing 67 arranged in said at least [one] bore, through which said screw can be passed for screwing said screw into said substructure, said **bushing being able to swivel in several spacial directions** when seated in said bore, said bushing further comprising **a seat for at least partially receiving at least a partial surface of said head of said screw**, as recited in column 4, lines 50-68, column 5, and seen in figures 5-8." [Emphasis added.]

i. Stoffer bushing 67 ***fails*** *to swivel when seated in the bore of the fixing element 65. Bushing 67 is fixed to fixing element 65 by rivets 79. Instead, it is ball nut 83 that swivels in within fastener 64 to provide varied spatial direction for the threaded attachment member 103, which is installed in the ball nut to attach to the substructure [not shown].*

ii. Stoffer bushing 67 ***fails*** *to provide a seat for at least a partial surface of the head of screw 103. Instead, ball nut 83 provides such a seat. If fastener 64 is considered to be the screw, it has* ***no*** *head for which the bushing 67 is to provide a seat.*

iii. There is no support in column 4, lines 50-68, column 5 or figures 5-8 for the examiner's position. Column 4, lines 50-68 state:

> *The embodiment of FIGS. 5-8 is configured to receive an off-center, skewed or variable threading axis for a threaded member [103] attached to [fixing element] section 65 using fastener 64. Accordingly, ball nut 83 is configured with a threaded diametric hole 84 of a preselected size for receiving a threaded attachment member [103] (shown in phantom in FIG. 8). . . . .*

Thus, it is the ball nut 83 that swivels and provides a seat for a partial surface of the head of screw 103.

The examiner states that "[w]ith respect to the 'wherein' clause, it has been held that the functional 'whereby' and 'wherein' statements do not define any structure and accordingly cannot serve to distinguish" citing *In re Mason*, 114, USPQ 127, 44 CCPA 937 (1957). However, does not apply to the present wherein clause in claim 1;

wherein an inner surface of said bore and an outer surface of said bushing are formed to be about spherically curved, such that a region of largest diameter of said inner surface and said outer surface is situated between an upper edge and a lower edge of said bore, wherein said bushing is loss-proof pressed in said bore

because the wherein clause in claim 1 sets forth structural elements and relationships, i.e.,

a) *an inner surface of said bore and an outer surface of said bushing are about spherically curved,*

b) *a region of largest diameter of said inner surface and said outer surface is situated between an upper edge and a lower edge of said bore,* and

c) *said bushing is loss-proof pressed in said bore.*

These are structural recitations.

Thus, it is not seen how the present invention is anticipated by, or would have been obvious to one of ordinary skill in the art in view of, Stoffer et al.

In the corresponding European application, a rejection of the present invention was made over EP 0 355 035 B1, a copy of which is submitted herewith. Specifically, the European examiner referred to Fig. 6, which at first glance looks very similar to the present invention. However, after considering the specification at column 4, lines 3-11, which describes Figure 6, it is clear that the device of Figure 6 works only because insert 30 is a slotted sphere, which expands when inserting the screw. Therefore, Applicants submit that this reference does not teach a structure **wherein**

said bushing is loss-proof pressed in said bore. Instead, in EP 0 355 035 B1, the bushing only locks into plate 21 after the screw is inserted.

Thus, it also is not seen how the present invention is anticipated by, or would have been obvious to one of ordinary skill in the art in view of, EP 0 355 035 B1.

It is further submitted that the subject application is in a condition for allowance. An early consideration and notice of allowance are earnestly solicited.

If after consideration, the examiner considers that any issues remain outstanding, Applicants request that the examiner call their undersigned attorney.

Respectfully submitted,

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